Frequently Asked Questions (FAQs) about the Live Entertainment Tax

Note: The guidance below applies to specific sets of facts and cannot necessarily be applied to another situation without further consideration. Licensees who desire a ruling as to whether the guidance herein or a specific section of the statute or regulation applies to a specific tax situation should direct a written request for an advisory ruling to the Chairman of the State Gaming Control Board.

Furthermore, although the Gaming Control Board believes this guidance is correct, licensees may still petition the Nevada Gaming Commission for a redetermination of any audit adjustments included in a Statement of Determination prepared by the Board, even if the adjustment is consistent with the advice given herein. The Nevada Gaming Commission has neither approved nor disapproved this guidance.

Admission Charges

A1. Is a fee collected to ride an elevator or escalator to a live entertainment facility an admission charge?

Typically, yes. Special consideration needs to be given to situations where the patron, by riding the escalator or elevator, may gain access to a live entertainment facility, or may choose to visit only facilities that do not offer live entertainment. For purposes of taxing the admission charge, no distinction shall be made as to whether the patron actually entered a facility with live entertainment or not. Therefore, all such elevator/escalator charges will be subject to the tax unless a separate admission charge must be paid in order to gain access to the live entertainment facility. (Posted 12/22/03)

A2. Section 19(1)(g)(2) of Regulation 13 provides that if an admission charge is collected, the licensee must pay taxes on any food, refreshments or merchandise sold in any part of the facility to which admission is granted based upon the payment of the admission charge. Does that mean that taxes must be paid on sales in restaurants without entertainment that are accessible only by the elevator or escalator for which a charge is required?

No. Taxation of food and beverages offered in facilities accessible by the elevator or escalator requires additional analysis of what comprises the "facility". Assume that a licensee has an elevator that takes patrons to floors 10 and 11 of the property and the licensee charges $10 to ride the elevator to either of these floors. On floor 10 is a café that does not offer live entertainment at any time. On floor 11 is a nightclub that has an indoor area where live entertainment is provided, and also has a patio area that guests may visit and that this patio has a bar for the convenience of patrons.

The café on floor 10 is not part of the facility in which live entertainment is offered. It is physically separated from the nightclub by virtue of its being on a separate floor. There is no connection between the purchase of food and refreshment in this café to the viewing of the live entertainment. Similar distinctions may be made for facilities on the same floor if they can reasonably be deemed to constitute separate facilities by virtue of bearing separate names and having separate entrances. If the licensee can demonstrate that it has refunded the $10 charge to patrons who dine in the café, the charge would not be subject to the tax.

The nightclub and patio, however, are considered to be one facility. The patio is not a separately named facility, and patrons could be expected to pass freely from the indoor area to the patio and vice-versa. All purchases of food or refreshment, whether occurring in the indoor area or the patio area, are subject to the tax. (Posted 12/22/03)

Live Entertainment Status

B1. Section 18 of Regulation 13 defines when live entertainment status commences in cases where an admission charge is collected. Does the facility start being in live entertainment status as soon as the first person pays an admission charge?

No. Many licensees allow patrons to purchase tickets well in advance of the actual performance. Furthermore, some licensees may allow patrons to pay an admission charge and get a "hand stamp" or similar indication of payment prior to the start of live entertainment and prior to the time they start requiring the payment of an admission charge in order to enter the facility.

For traditional showrooms, live entertainment status begins as soon as patrons are admitted to the showroom for the performance. For example, assume that the show is scheduled to begin at 10 pm. Patrons with tickets for this show are admitted beginning at 9 pm. The showroom is in entertainment status at 9 pm. Food, refreshments, and merchandise sold

between 9 pm and the time the showroom is vacated by persons who attended the 10 pm show are subject to the tax, regardless of the time the actual performance begins and ends. The admission charge, regardless of the time paid, is always subject to the tax.

For lounges, bars and similar facilities where an admission charge applies only part of the day, but the facility is open at other times, the facility is in live entertainment status as of the time the patron is required to pay the admission charge. For example, assume that a licensee operates a facility that is open from noon until 1 am. The licensee imposes an admission charge beginning at 8:30 pm, and live entertainment begins at 9 pm. The facility enters live entertainment status at 8:30 pm and remains in that status until the licensee admits all persons without the payment of an admission charge. All sales of food, refreshments and merchandise within that facility are subject to the tax during this time period. The admission charge, regardless of the time paid, is always subject to the tax. (Posted 12/22/03)

Bars and Restaurants in Close Proximity to Entertainment Facilities

C1. How will the Gaming Control Board apply the provisions of Section 19(1)(f) of Regulation 13?

Although the language has been modified somewhat from the previous version of Regulation 13, this concept is not new. Historically, it has been applied to any situation where the entertainment is in a facility but patrons routinely purchased food or beverage outside the facility to be consumed within the facility where the entertainment is provided. Most often, this occurred with showrooms without cocktail service where there was a bar (either permanent or portable) that was right outside the showroom. If the Board had sufficient evidence to show that the **primary purpose** of this bar was to serve the patrons who were viewing the entertainment, then the sales from this bar were subject to the tax. The primary purpose tests included consideration of the hours of operation of the bar relative to the entertainment hours, and the frequency with which other patrons were likely to purchase refreshments from the bar. Determinations of the taxability of sales from such bars were, and will continue to be, made on a case-by-case basis. (Posted 12/22/03)

C2. Could Section 19(1)(f) of Regulation 13 ever apply to a situation where the entertainment was offered by one licensee but the food was sold on the property of another licensee?

Such application would be infrequent, though not impossible. Generally, the Board will not presume that the primary purpose of the food venue set

up on the premises of one licensee was to serve patrons viewing live entertainment on the premises of another licensee. The question was raised with respect to situations where a licensee provided entertainment outdoors, and another licensee had outdoor seating where food was sold, and patrons who were seated within that area could view the entertainment. Unless there was an arrangement between the two licensees whereby the entertainment was provided with the intent of entertaining those patrons, the tax would not generally apply.

However, if the Board determines that such an arrangement does exist and that the licensee offering the entertainment receives consideration for providing entertainment to the other licensee's patrons (including reciprocal arrangements), then such sales may be deemed subject to the tax. (Posted 12/22/03)

SB No. 8, LET Regulations, LET MICS and ICPs – Administrative Matters

D1. Why are there multiple regulations dealing with live entertainment?

Senate Bill 8 required the Board to adopt regulations subject to the provisions of NRS 233B. Such regulations are part of the Nevada Administrative Code (NAC). Generally, the Board's and Commission's regulations are exempt from the provisions of this chapter of the statutes, and the Nevada Gaming Commission adopts regulations governing gaming without the oversight of the Legislative Commission. Senate Bill No. 8 contained a requirement that the Board adopt regulations subject to the provisions of NRS 233B, and that it do so in cooperation with the Department of Taxation. This was a unique process. The Nevada Tax Commission adopted regulations governing the live entertainment tax for non-gaming businesses on November 25, 2003. The Legislative Commission approved these regulations on December 3. The Legislative Commission voted to accept the Gaming Control Board's regulation on December 15, 2003. The Board formally adopted this regulation on December 18.

Regulation 13 relating to the Casino Entertainment Tax also required amendment in order to avoid having this Nevada Gaming Commission regulation be in conflict with the NAC. As such, the NGC met on December 18, 2003 and voted to adopt amendments to Regulation 13 that would make it identical to the NAC regulation. In conformity to standard procedures for drafting NAC regulations, very little found in the law is duplicated in regulation. Therefore, it may necessary to refer to the law for a complete understanding of the taxability of various events. (Posted 12/22/03)

D2. Senate Bill No. 8 refers to "a new chapter" in Title 32 of the Nevada Revised Statutes where the live entertainment tax provisions will be incorporated. What is the chapter number?

The law is reflected in NRS 368A. ~~However, as of the date of this posting, the legislative web site has not been updated to reflect the passage of bills during the 2003 regular and special sessions, nor have printed copies been made available. As such, interested parties should refer to Senate Bill No. 8.~~ (Posted 12/22/03, Amended 03/25/04)

NRS 368A is now available through the Board's website (http://gaming.nv.gov/stats_regs.htm). (Posted 03/25/04)

D3. Will the MICS for entertainment be changed? How about the ICPs? What should licensees do until the changes are made?

Group I licensees should comply with the adopted entertainment MICS. As of January 21, 2004, licensees will need to comply with Version 4. In ~~February~~ 2004, the Board will begin the process of drafting revisions to the MICS to address changes necessitated by the new LET regulations.

Group II licensees and restricted licensees must comply with the published Internal Control Procedures (ICPs) for entertainment. Although changes may be made to these procedures in the future, the current ICPs (dated October 5, 1995) are to be complied with at this time. (Posted 12/22/03, Amended 03/25/04)

Note that the Tax and License Division has issued a letter dated January 30, 2004 indicating that it has initiated the process for revisions to the ICPs. (Posted 03/25/04)

Facility Size

E1. A casino operates a very large facility that has been rated by the fire marshal as having a maximum seating capacity well over the 7,500-seat threshold that would result in admissions being taxed at 5% (with no tax on food, refreshments or merchandise). However, sometimes the seating capacity for a specific event is well below that number. In fact, sometimes the performer sets a maximum for ticket sales substantially below this threshold. What tax rate applies?

NRS 368A.200(6)(a) specifically states that the maximum seating capacity for purposes of the live entertainment tax is to be based upon the fire marshal's rating if one has been determined. Therefore, unless the fire

marshal has re-rated the facility, the licensee should pay taxes on admissions only at the rate of 5%. (Posted 03/25/04)

Nonprofit Organizations

F1. What special steps should a licensee take if it intends to consider an event exempt from the live entertainment tax because it is a nonprofit benefit?

Senate Bill No. 8 and Regulation 13, Section 15 provide guidance as to when an event is not subject to the tax because the proceeds go to a qualifying organization. Licensees are responsible to ensure that they are dealing with a qualifying organization. If it is subsequently determined that a licensee has failed to pay taxes on an event that was improperly treated as a nonprofit benefit, the taxes will be assessed on any admissions, and all sales of food, refreshments and merchandise made during this event, except as otherwise provided by regulation or statute.

Regulation 13, Section 22 requires that licensees maintain records showing that they were entitled to exempt admission charges and sales from taxation. Although this requirement does not apply *solely* to this type of exemption, it is applicable. Regulation 13, Section 16 contains further guidance as to the extent of records that may be requested by the Board for nonprofit organizations. Licensees are responsible for ensuring that the records described in that section of the regulation are available before concluding that an event is to be considered a nonprofit benefit.

In addition to the appropriate records (IRS ruling or other documentation) that demonstrate that the organization receiving the proceeds is a qualifying organization, the licensee must also keep records showing the amounts collected, the amounts remitted to the qualifying organization, and the direct, supportable costs associated with the event (if the licensee is to be reimbursed for these costs or is to retain a portion of the proceeds to cover the costs). A copy of the agreement between the licensee and the qualifying organization should also be maintained. (Posted 12/22/03)

Tickets Sold by Wholesalers and Other Parties

G1. How is the tax to be applied to tickets sold by someone other than the person (or entity) that operates the live entertainment facility?

Assume that ABC Casino Company (ABC), the gaming licensee has a show on its property. The facility is actually operated by The Entertainers, Inc. (TEI). Although both ABC and TEI sell tickets to this show, other parties do as well. These other parties charge a fee of $5 and remit to TEI

only the proceeds net of the $5 fee. None of these other sellers are related to either ABC or TEI. In this case, the net proceeds are subject to the tax. The $5 fee is excluded from the taxable sale. This is consistent with historical practices for taxation under the Casino Entertainment Tax and the superseded Regulation 13. Further information on computing the actual taxable amount under this scenario can be found in the Board's GAP manual (http://gaming.nv.gov/documents/pdf/gap_entertain.pdf) under "Discount Show Ticket Accounting Procedures."

However, assume that XYZ Sub, Inc., an affiliate (as that term is defined in NRS 463) of ABC, sells the tickets and remits only $10 from each sale to ABC. Because the company selling the ticket is affiliated with the gaming licensee, the amount paid by the patron should be used to determine the taxable sale amount (with the appropriate consideration being given to sales taxes and gratuities). The same answer would apply to sales made by an affiliate of TEI.

Note that fees paid by TEI to ABC for selling tickets would never reduce the taxable amount of the sale. Furthermore, the amount collected by TEI is the amount on which the taxable sale is computed, regardless of any arrangement between TEI and ABC. (Posted 12/22/03)

Types of Live Entertainment

H1. Is Karaoke ever "live entertainment"?

Yes, in some circumstances. Although the definition of live entertainment adopted by the Nevada Tax Commission (this definition is found at the end of Regulation 13, following section 27) specifically excludes patrons entertaining other patrons, it is important to take into consideration two important factors.

First, a patron is defined in Regulation 13, Section 9 as a " …person who gains access to a facility where live entertainment is provided and who neither solicits nor receives, from any source, any payment, reimbursement, remuneration or other form of consideration for providing live entertainment at the facility." Accordingly, if the facility operator provides prizes for contests, the patrons are no longer acting as patrons, but instead are amateur performers.

Second, the person operating the Karaoke equipment and organizing patron involvement may take on the role of a performer. As with disc jockeys, if the operator of the Karaoke equipment limits his or her activities to the following, they will not be considered performers:

1. Introducing the music;
2. Making announcements of general interest to patrons; and
3. Explaining, encouraging or directing participatory activities between patrons.

If, however, the person sings or performs other types of live entertainment, then he or she has become a performer. Licensees are encouraged to specify, by contract, the range of activities to be performed by the Karaoke operator. Entertainment MICS #15 requires monthly observations of the licensed gaming establishment to ensure that areas subject to entertainment tax are identified. As part of these observations, licensee personnel should be ensuring that forms of entertainment that have been deemed not to be live entertainment are properly categorized. (Posted 3/05/04)

H2. What kinds of activities by bartenders could constitute "live entertainment"?

Most bartender activities would not qualify as live entertainment even if bottles are juggled or fancy serving techniques designed to entertain the patrons are utilized. However, if the bartenders engage in singing, dancing or acrobatics, these activities are likely to be considered live entertainment, just as if any other performer were to be involved.

There is a specific exclusion in the definition of live entertainment for "Occasional performances by employees whose primary job function is that of preparing or serving food, refreshments or beverages to patrons, if such performances are not advertised as entertainment to the public." Note that two criteria must be met. First, the performances must be occasional, not performed frequently. Second, the activities of the bartenders must not be advertised as entertainment. In a few facilities in Nevada, these criteria would not be met, as the activities of the bartenders constitute the primary draw to the facility. The advertising for these facilities focus on the activities of the bartenders. (Posted 03/25/04)

H3. Are fashion shows live entertainment?

Yes, in most cases. The only exception would be if the models move continuously through the audience and there is no one on stage orchestrating the presentation of the models. For example, if there are models who simply walk around in clothes and tell people who are dining where they can buy the clothes, this would not generally be considered a fashion show for purposes of live entertainment. However, if, for example, a local radio personality were to go into a casino and emcee a fashion show and make the announcements regarding what each model is

wearing, then this would be a fashion show and would be considered live entertainment.

Because the exclusion (found in the definition of live entertainment, which is located in a note following section 27 of Regulation 13) for non-musical performers who stroll continuously throughout the facility applies only to facilities in gaming establishments licensed for at least 51 machines or at least 6 games, gaming establishments with fewer machines and games should ask for a ruling specific to their establishment. (Posted 03/25/04)